HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

WPSB No. 251/03
Sri Ayaz Hussain

vs

State of Uttaranchal

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 10.7.2005

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 251 of 2003 (SB)

1. Sri Ayaz Hussain s/o Sri Sheikh, r/o Kidwai Nagar, Haldwani, District Nainital
2. Sri Kulwnt Singh s/o Sri Budh Singh R/o 89-A, Dharampur, Dehradun
3. Sri Deepak Sharma s/o Sri Sri Tilak Raj Sharma R/o 178/7 Haridwar Road, Dehradun
4. Sri Dilbar Singh Gosain s/o Sri V.S. Gosain, R/o 10 II Racecourse Colony, Dehradun.
5. Sri Ram Khiladi Surya s/o Sri Munshi Lal Surya, 477 Vijay Parth, Dehradun ..... Petitioner

Versus

1. State of Uttaranchal
2. Additional Secretary Transport, Uttaranchal
3. Transport Commissioner, Uttaranchal, Dehradun
4. Public Service Commission, Uttaranchal, Dehradun
5. Sri D.C. Pandey Incharge Ar.TO. Haldwani
6. Sri Sudarshan Garg, Inchage A.r.T.O. Kotdwar
7. Sri Sudhakar Chandola, Incharge ARTO Rishikesh
8. Sri R.K. Verma Sambhagiya Nirishak (Pravidhik), Dehradun. ..... Respondents

Writ Petition No. 384 of 2004 (SS)

Alok Kumar s/o Sri Kailash Prakash r/o 497 Vijay Park Extention Lane No. 3, Ballupur Road, Dehradun..... Petitioner

Versus

1. State of Uttaranchal
2. Transport Commissioner 228 Mohit Nagar, Uttaranchal, Dehradun
3. Assistant Regional Transport Office (Admn.) Haridwar ..... Respondents

Sri Akhilesh Kalra, Advocate, Sri K.C. Sinha, Advocate for the petitioners.
Sri P.C. Jhingan, Advocate and Standing Counsel for the respondents.

Dated: July 10, 2006

Hon'ble Rajesh Tandon, J.

Heard Sri Akhilesh Kalra, Advocate counsel for the petitioners and Sri P.C. Jhingan, Advocate and Standing counsel for the respondents.

By the present writ petitions the petitioners have prayed for a writ of certiorari quashing the order-dated 4.3.2003 passed by the respondent no. 2 and subsequent order dated 19.3.2003 passed by the respondent no. 3.

Briefly stated according to the petitioners they are permanent employees of the Transport Department. Each of the petitioners possesses two years motor mechanic Course from the respective industrial training institutes. The petitioners have submitted that for the post of Assistant Regional Inspector (Technical) in the Transport Department following qualification is required according to U.P. Transport (Subordinate) Technical Service Rules 1980:

I. High School (Science) of U.P. Board or any examination recognized by U.P. Government equivalent to it.

II. Must possess a certificate of having passed the Motor Mechanic Course from any Industrial Training Institute recognized by the High School and Intermediate, Board of Technical Education or any examination recognized by Government equivalent thereto.

III. Five years practical experience in as automobile workshop regarding maintenance and over haul of automobile and repair thereof.

IV. Must possess a license for driving heavy motor vehicle and

V. Must have a thorough knowledge of Hindi written in Devnagri script.

The petitioners have submitted that they possess requisite qualification for the post of assistant regional Inspector (Technical) in the Transport Department. In meeting of the Ministerial Service Association with the respondents held in month of July 1987, an agreement was reached with the Transport Commissioner U.P. that the departmental employees posted in subordinate offices possessing requisite qualification be considered for ad hoc appointment against vacant posts of Assistant Regional Inspector (Technical) and Assistant Prosecuting Officer respectively. Consequently, the Transport Commissioner, U.P. invited applications from the departmental employees possessing prescribed qualification for appointment to the post of Assistant regional Inspector (Technical). The petitioners applied for appointment vide applications dated 15.8.1987, 12.8.1987, 12.8.1987 and 30.12.1987 respectively. The petitioners have further submitted that after repeated requests the respondents have not considered the claim of the petitioners and the petitioners have preferred a writ petition No. 10225 of 1989 before the Allahabad High Court. The court on 26.11.1989 has passed the following order:

"List after expiry of three weeks.

In the mean time it will be open for the opposite party to consider the applications of the petitioners for appointment on the post of Assistant Regional Inspector (Technical) and for regularization having regard to their qualification."

The petitioners thereafter have submitted their fresh representations before the authorities concerned and vide office order No. 243 dated 20.4.2002 the Incharge Additional Transport Commissioner granted additional charge of Assistant Regional Inspector (Technical) to the petitioners.

This Court on 8.4.21003 passed the following order:

"The respondents will not interfere in the working of the petitioner on the post of Assistant Regional Inspector Technical till 31.5.2003 or till regular selection is made whichever is earlier."

Thereafter on 4.3.2003 the Additional Secretary, Uttaranchal Government without giving any opportunity to the petitioners for hearing reverted the petitioners to their original posts.

Natural justice requires that once the respondents have permitted the petitioners to continue to work on ad hoc basis they were entitled to be heard before any order for termination was passed. No opportunity was given to the petitioner for being heard before passing the impugned order. The order, therefore, was passed by the respondents in utter violation of the principles of natural justice.

The Apex Court in the case D.K. Yadav vs. J.M.A. Industries Ltd; (1993) 3 SCC 259 has held as under:

"It is a fundamental rule of law that no decision just be taken which will affect the right of any person without fist being informed of the case and giving him/her an opportunity

of putting forward his/her case. An order involving civil consequences must be made consistently with the rules of natural justice. In Mohinder Singh Gill vs. Chief Election Commissioner (1978) 1 SCC 405 the Constitution Bench held that civil consequences covers infraction of not merely property or personal right but of civil liberties, material deprivations and non-pecuniary damages. In its comprehension connotation every thing that affects a citizen in his civil life inflicts a civil consequence. Black's Law Dictionary, 4th Edn. Page 1487 defined civil rights are such as belong to every citizen of the state of country…….. they include…… rights capable of being enforced or redressed in a civil action.……In State of Orissa vs. (Miss) Binapani Dei (1967) 2 SCR 625 this Court held that even an administrative order which involves civil consequences must be made consistently with the rules of natural justice. The person concerned must be informed of the case, the evidence is support thereof supplied and must be given a fair opportunity to meet the case before an adverse decision is taken. Since no such opportunity was given it was held that superannuation was in violation of principle of natural justice.

In State of W.B. vs. Anwar Ali Sarkar 1952 SCR 284: AIR 1952 SC 75 per majority, a seven Judges Bench held that the

rule of procedure laid down by law comes as much within the purview of article 14 of the Constitution as any rule of substantive law. In Maneka Gandhi vs. Union of India (1978) 1 SCC 248 another Bench of seven Judges held that the substantive and procedural laws and action taken under them will have to pass the test under Article 14. The test of reason and justice cannot be abstract. They cannot be divorced from the needs of the nation. The tests have to be pragmatic otherwise they would cease to be reasonable. The procedure prescribed must be just, fair and reasonable even though there is no specific provision in a statute or rules made thereunder for showing cause against action proposed to be taken against an individual, which affects the right of that individual. The duty to give reasonable opportunity to be heard will be implied from the nature of the function to be performed by the authority, which has the power to take punitive or damaging action. Even executive authorities which take administrative action involving any deprivation of or restriction on inherent fundamental rights of citizens, must taken care to see that justice is not only done but manifestly appears to be done. They have a duty to proceed in a way, which is free from even the appearance of arbitrariness, unreasonableness or

unfairness. They have to act n a manner which is patently impartial and meets the requirements of natural justice."

The Apex Court in the case Shrilekha Vidyarthi vs. State of U.P. AIR 1991 SC 537 has held as under:

"It is now too well settled that every State action, in order to survive, must not be susceptible to the vice of arbitrariness which is the crux of Art. 14 of the Constitution and basic to the rule of law, the system which governs us. Arbitrariness is the very negation of the rule of law. Satisfaction of this basic test is every state action is sine qua non to its validity and in this respect, the State cannot claim comparison with a private individual even in the field of contract. This distinction between the State and a private individual in the field of contract has to be borne in the mind.

…… ……

Every Stage action must be informed by reason and it follows that an act uninformed by reason, is arbitrary. Rule of law contemplates governance by laws and not by humour, whims or caprices of the men to whom the governance is entrusted for the time being. It is trite that 'be you ever so high, the laws are above you.' This what men in power must remember, always.

Almost a quarter century back, this Court in S.G. Jaisinghani vs. Union of India (1967) 2 SCR 703, at pp. 718-19

: (AIR 1967 SC 1427 at p. 1434), indicated the test of arbitrariness and the pitfalls to be avoided in all State actions to prevent that vice, in a passage as under:

"In this context it is important to emphasize that the absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion when conferred upon executive authorities must be confined within clearly defined limits. The rule of law from this point of view means that decisions should le made by the application of known principles and rules and in general, such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law (see Dicey "Law of the Constitution"

Tenth Edn. Introduction ex). "Law has reached its finest moments" stated Douglas, J. in United States v. Wunderlick (1951-342 US 98: 96 Law Ed 113), "When it has freed man from the unlimited discretion of some ruler..... where discretion is absolute, man has always suffered". It is in this sense that the rule of law may be said to be the sworn enemy of caprice, Discretion, as Lord Mansfield stated it in classic terms

in the case of John Wikes (1770-98 ER 327) "means sound discretion guided by law. It must be governed by rule, not humour: it must not be arbitrary, vague and fanciful."

In view of the facts and circumstances of the case order dated 4.3.2003 could not have been passed without affording opportunity of hearing to the petitioners. The order of reversion therefore, cannot be allowed to sustain.

The counsel for the petitioners have submitted that there are 7 sanctioned posts of Assistant Regional Inspectors (Technical) and till date no person has been regularly appoint3d in those vacant sanctioned posts.

In view of above, a writ of certiorari is issued quashing the order-dated 4.3.2003. The petitioners shall continue to work as Assistant Regional Inspectors (Technical) till the posts are filled by regularly appointed candidates.

Accordingly, writ petitions are allowed. No order as to costs.

Dated: July 10, 2006 **Rajesh Tandon, J.**
*Dhyani